

**VOLUNTARY CLEANUP CONTRACT  
10-5139-NRP**

**IN THE MATTER OF  
A Portion of the Calhoun Park Area Site, Charleston County  
and  
CONCORD PARK/CHARLESTON, LLC**

This Contract is entered into by the South Carolina Department of Health and Environmental Control and Concord Park/Charleston, LLC with respect to the Property located at 25 Calhoun Street, Charleston, South Carolina 29401. The Property includes approximately 0.6 acres identified as a portion of Tax Map Serial Number 458-01-02-028 (Tract A). In entering this Contract, the Department relies on the representations of the "Non Responsible Party Application for Voluntary Cleanup Contract" (the "Application") of February 2, 2010 by Concord Park/Charleston, LLC ("CPC"), which is incorporated into this Contract and attached as Appendix A.

**AUTHORITY**

This contract is entered pursuant to the Brownfields/Voluntary Cleanup Program, S.C. Code § 44-56-710-760, as amended; the South Carolina Hazardous Waste Management Act ("HWMA"), S.C. Code Ann. § 44-56-10, et. seq., and the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601, et seq.

**DEFINITIONS**

1. Unless otherwise expressly provided in this Contract, terms used in this Contract shall have the meaning assigned to them pursuant to the Brownfields/Voluntary Cleanup Program, S.C. Code Ann. § 44-56-710 through 760 (Supp.2008), and if not set forth therein, shall have the meaning assigned to them pursuant to the South Carolina Hazardous Waste Management Act, S.C. Code Ann. § 44-56-10, et. seq., the S.C. Pollution Control Act, S.C. Code Ann. § 48-1-10, et. seq., the S.C. State Underground Petroleum Environmental Response Bank Act, S. C. Code Ann. § 44-2-10, et. seq., or the Comprehensive Environmental Response, Compensation and Liability Act

(CERCLA), 42 U.S.C. §§ 9601, et seq.

- A. "CPC" means Concord Park/Charleston, LLC.
- B. "Beneficiaries" means CPC's Non-Responsible Party lenders, parents, managers, members, employees, subsidiaries, assigns and successors, including new purchasers, lessees, heirs, devisees, and other parties acquiring an interest in any portion of the Property, but only to the extent that such parties have never been a Responsible Party at the Site.
- C. "Contamination" means the presence of a contaminant, hazardous substance, petroleum, or petroleum product.
- D. "Contract" means this Voluntary Cleanup Contract.
- E. "Department" means the South Carolina Department of Health and Environmental Control, or a successor agency of the State of South Carolina that has responsibility for and jurisdiction over the subject matter of this Contract.
- F. "East West" means East West Cumberland Park Associates, LLC.
- G. "Existing Contamination" shall mean any contamination including pollutants or contaminants, petroleum or petroleum products, or hazardous substances present on, or under, the Site as of the execution date of this Contract.
- H. "Property" means the real property as described in the Application attached as Appendix A, and that is subject to the ownership, prospective ownership, or possessory or contractual interest of CPC. The Property is identified as a portion of Tax Map Serial Number 458-01-02-028 (Tract A) and is approximately 0.6 acres. The Property is bounded generally to the north by Calhoun Street with a public parking garage and a South Carolina Electric and Gas ("SCE&G") substation

beyond the garage; to the east by property subject to Voluntary Cleanup Contract 08-5754-NRP entered into by East West; undeveloped City of Charleston property to the south; and to the west by Parcel 305A-2, which parallels and abuts Washington Street and provides rail service to the South Carolina Ports Authority located beyond Laurens Street to the south.

- I. "Segregated Sources" means drums, tanks, or similar discrete containers that potentially hold substances that may cause contamination upon release to the environment.
- J. "Waste Materials" means any contamination-causing solid, semi-solid, or liquid material discarded, buried, or otherwise present on the Property, and may include sludge, slag, or solid waste materials such as empty containers and demolition debris or materials containing asbestos, lead-based paint, or petroleum or other contaminants.

## FINDINGS

- 2. Based on the information known by the Department, the following are asserted for this Contract:

- A. Owners and Operators: The historical owners and operators of the Property are as follows:

Multiple Owners of residences or businesses	Unknown to 1939
Charleston Housing Authority	1939 to 1996
South Carolina State Ports Authority	1996 to 1998
City of Charleston	1998 to June 2010
East West Cumberland Park Associates, LLC	To acquire in June 2010

B. Property and Surrounding Areas: The Property was initially investigated as part of the Department's designated "Calhoun Park/Ansonborough Homes Coal/Gas Site", an approximately 25 to 30 acre area ("Calhoun Park Area Site") that was subdivided into three areas. The approximately 0.6 acre Property subject to this Contract is part of the approximately 10 acre southernmost portion previously occupied by a 162-unit public housing project known as Ansonborough Homes. When the South Carolina State Ports Authority ("SCSPA") purchased the Property and the balance of the Ansonborough Homes Area in 1996 (with an agreement giving the City the right to purchase the property subject to the rail easement), SCSPA and EPA entered into an Agreement and Covenant not to Sue for the Existing Contamination. All structures associated with Ansonborough Homes were demolished in 1996 and 1997. When the City purchased the Ansonborough Homes Area in 1998, SCSPA retained an easement across the Ansonborough Homes property to construct a railroad connection. CPC is not acquiring the property subject to that easement (the Residual City Land). The US EPA has subsequently determined that the Ansonborough Homes area is not included within the boundaries of the Calhoun Park Site under their jurisdiction as a NPL-E (National Priority List- Equivalent) site.

C. Past Industries Outside the Property. From approximately 1855 until 1910, the northernmost portion of the Calhoun Park Area Site was occupied by the SCE&G coal-gasification plant. The coal-gasification process resulted in waste products such as coal tar, various sludges, coke, ash, and spent oxide/lime. The waste contained polyaromatic hydrocarbons, light aromatics, phenols, inorganics and metals. Several industries also previously occupied the middle portion of the Calhoun Park Area Site. Between 1885 and 1892, the Fernoline Chemical Co. was located in this area and was identified as a creosote, chemical, and paint manufacturer. More recent occupants stored steel on this portion while other uses are unknown. None of these industries were located on the Property. According to the 1888 Sanborn Maps, four rosin yards were located on the northern portion of the Ansonborough Homes Area. One rosin/lumber yard (identified as 1 Calhoun

Street) extended from Concord Street to 23 Calhoun Street, which is west of the Property. 23 Calhoun Street was identified as a Wood Yard. Exhibit 1 shows the location of these various industries.

D. Groundwater Investigations of the Property. Various groundwater investigations have been conducted on the Ansonborough Homes Area of the Calhoun Park Area Site. The direction of groundwater flow in the shallow aquifer was determined to be toward the Cooper River, which is approximately 500 feet to the east of the Property. Groundwater flow is tidally influenced. In 1997, an interlocking sheet pile wall was installed to a depth of twenty feet on the South (Property) side of Calhoun Street from Washington Street eastward to Concord Street. This sheet pile wall provides a hydraulic barrier to the Property from shallow contaminated groundwater migrating from the former coal-gasification plant north of the Property. Shallow groundwater monitoring well AM-05A was installed on the Residual City Land, west of the Property and monitored for more than two years for benzene, toluene, ethylbenzene, and xylenes ("BTEX"), polynuclear aromatic hydrocarbons ("PAHs") and SVOCs. No parameter was reported at concentrations greater than the laboratory method detection limit.

E. Soil Investigations of the Property. Various soil investigations have been conducted on the Ansonborough Homes Area of the Calhoun Park Area Site. In August 2002, SCANA, the Responsible Party for the Calhoun Park Area Site, installed three shallow soil borings on the northern portion of the Ansonborough Homes Area property. Polynuclear aromatic hydrocarbons and metals, constituents of coal tar, were not detected. Additional analysis concluded that contaminants were present on the Ansonborough Homes property starting at approximately two feet below the surface. In May 2003 analysis for volatile and semi-volatile organic compounds and for certain metals indicated that none of the constituents were detected in surface soil samples (0 to 2 feet) at concentrations greater than their respective industrial preliminary remediation goal ("PRG") or site-specific action level established by the EPA. However subsurface soil samples (from 3 to 4 feet) were

impacted. These findings are consistent with the placement of a two-foot cap across the Property in 1997. The EPA recommended that excavated subsurface soil not be used on-site as fill material and that engineering controls be used to limit contact with such soil by future workers on the Property.

- F. VCC 08-5754-NRP with East West. On July 25, 2008, the Department executed VCC 08-5754-NRP with East West for A Portion of the Calhoun Park Area Site to include the Property subject to this Contract. When this Contract is fully executed, the Department will amend the East West VCC to exclude the Property acquired by CPC.
- G. VCC Investigation Report. As part of the VCC investigation (SCS Engineers, August 2008) surface and subsurface soil and groundwater samples were collected from the #1 and #4 locations, which are on the Property. Surface soil was analyzed for the EPA TAL/TCL (Target Analyte List/Target Compound List) parameters. Arsenic was detected in both surface soil samples at concentrations greater than the R/I PRGs (residential and industrial preliminary remediation goals). No pesticides or volatile organic compounds (VOCs) were detected in the surface soil; benzo(a) pyrene, a SVOC (semi-volatile organic compound) was detected in the #4 location at a concentration greater than both the R/I PRG. The concentration of dibenz (a,h) anthracene was estimated to be greater than the RPRG but less than the IPRG. In subsurface soil, arsenic, barium, cadmium, chromium and nickel were detected at concentrations that exceed the DAF (dilution attenuation factor) of 1, meaning that there is potential for these parameters to leach to groundwater. No VOCs but several SVOCs were detected in the #1 and #4 subsurface samples at concentrations that exceed their respective DAF of 1. A groundwater sample from the #1 location was analyzed for the full suite of TAL/TCL while a groundwater sample from the #4 location was analyzed only for the TCL VOCs. Heptachlor epoxide was the only parameter detected at a concentration greater than its maximum contaminant level (MCL). For verification, a second sample was collected using a method that produced a less turbid sample. Analysis of this second sample

did not detect this pesticide.

- H. Actions by the Department. On September 9, 2009, the Department determined that East West had completed the environmental assessment for the property subject to VCC 08-5754-NRP. At the same time, the Department approved East West's Soil Management Plan (the "East West SMP"), prepared by SCS Engineers, dated August 28, 2009. That East West SMP proposed the placement of an additional two feet of clean, imported soil above the clean fill placed on the Property in 1997, among other actions.
- I. Current Use of Property. For the past decade, the Property and the balance of the City-owned Ansonborough Homes Area has been open to the public and used for playing fields, public festivals, picnics, and similar public activities. No signage relating to the sub-surface contamination or restriction of activities exists on any of the Ansonborough Homes Area. Only the Residual City Land containing the rail line is fenced, and this is for rail safety purposes.
- J. Proposed Redevelopment: CPC intends to acquire the Property and construct an "environmentally responsible" three-story office building over parking. CPC intends for approximately 92% of the Property to be covered by an impervious layer (consisting of building footprint and paved parking), providing a barrier to residual contaminants in soil and a barrier to rainwater infiltration. The remaining area will be landscaped.

#### BONA FIDE PROSPECTIVE PURCHASER STATUS

- 3. CPC certifies that it is a Non-Responsible Party at the Site and is eligible to be a Bona Fide Prospective Purchaser for the Property. CPC is a Georgia limited liability company with its principal place of business located at 3333 Riverwood Parkway, Suite 300, Atlanta, Georgia 30339. CPC affirms that it has the financial resources to conduct the response action pursuant to this Contract.

## RESPONSE ACTION

4. CPC agrees to conduct the response actions specified in the sub-paragraphs below. CPC acknowledges that previous investigations document that contaminants are present in surface soil at concentrations unacceptable for unrestricted use. The activities required by this Contract are based on CPC's anticipated acceptance of land use restrictions as outlined in this Contract under the heading "Declaration of Covenants and Restrictions". CPC agrees to perform additional response actions, if necessary, consistent with the intended use of the Property in accordance with the Department's approval.
  - A. CPC shall submit a Soil Management Plan (the "SMP") to address the management of soil prior to, during, and following redevelopment of the Property. The SMP must outline activities to be taken should Calhoun Park Area Site contaminants be discovered in soil, the management of soil during construction/land disturbance activities; and the placement of a distinct exposure barrier in the landscaped areas of the Property not covered by an impermeable cap. The additional two feet of clean fill mentioned in the East West SMP shall not be required on the Property.
  - B. CPC shall submit plan views of the proposed development that depict the to-be-built structures including parking and landscaped areas. The to-be-built structures, parking and landscaped areas will be considered an engineered cap. This response action will be subject to maintenance, annual reporting, and deed restrictions as specified in Paragraph 9.
  - C. CPC shall enter and record a Declaration of Covenants and Restrictions to restrict the use of groundwater from beneath the Property. This response action will be subject to maintenance and annual reporting as specified in Paragraph 9.
  - D. All activities undertaken pursuant to this Contract shall be consistent with S.C. statutes and permitting requirements (e.g., stormwater management and waste disposal regulations). CPC shall identify and obtain the applicable permits before



beginning any action.

- E. All reports shall be in accordance with accepted industry standards and shall be signed and sealed by a Professional Engineer or Professional Geologist duly-licensed in South Carolina.
- F. CPC shall preserve items that may: 1) provide evidence of a Potentially Responsible Party's involvement at the site; 2) lead to the discovery of other areas of contamination; or 3) contain environmental information. Such items may include drums, bottles, labels, business and operating records, contracts, Site studies, investigations, and other physical or written materials relating to the Site. CPC shall notify the Department of the location of any such items, and provide the Department with an opportunity to inspect any materials or copy any documents at the Department's expense prior to destruction of said items.
- G. Assess Waste Materials and Segregated Sources:
  - 1). CPC shall assess Waste Materials and Segregated Sources upon their discovery on the Property at any time during assessment, corrective action, or development activities.
  - 2). CPC's assessment shall include characterization of the contaminant concentrations, and an estimation of the quantity or extent of each type of Waste Material or Segregated Source, as applicable.
  - 3). CPC shall expeditiously stabilize or remove from the Property any Segregated Source that has not yet released all contents to the environment upon discovery.
  - 4). CPC shall notify the Department if a release of contamination occurs as a result of its assessment, stabilization or removal actions. CPC shall assess the impact of the release and take necessary action in accordance with a Department approved plan.

H. Institute other reasonable contamination control measures:

CPC shall take any other reasonable measures to limit or prevent human exposure to existing contamination on the Property:

- 1). Measures shall be required for Waste Materials and contaminated media with concentrations in excess of appropriate human-health and ecological risk-based exposure standards via plausibly complete routes of exposure. The measures may include removal, encapsulation, barriers, or other methods reasonably expected to limit human exposures to the contamination.
  - i. The measures shall be approved by the Department prior to implementation, and shall be consistent with the intended future use of the Property.
  - ii. CPC shall provide appropriate documentation to demonstrate satisfactory completion of the control measures for Department review and approval prior to obtaining a Certificate of Completion.
- 2). CPC shall remove from the Property any Segregated Sources of contamination that have not yet released all contents to the environment.
  - i. The contents of the Segregated Sources shall be properly reused or disposed of in accordance with regulations.
  - ii. CPC shall document the characterization and ultimate disposition of the materials to the Department within sixty (60) days of removal of any material from the Property.

#### HEALTH AND SAFETY PLAN

5. CPC shall prepare and submit under separate cover from the Work Plan, a Health and Safety Plan consistent with Occupational Safety and Health Administration regulations. CPC agrees that the Health and Safety plan is submitted to the Department only for informational purposes. The Department expressly disclaims any liability that may result from implementation of the Health and Safety Plan by CPC.

## PUBLIC PARTICIPATION

6. CPC and the Department will foster public participation to implement this Contract as follows:

A. The Department will seek public comment and initiate a thirty-day claim contribution notification period in accordance with established procedures consistent with S.C. statutes upon signature of this Contract by CPC.

B. CPC shall erect a sign at major entrances onto the Property or other locations routinely accessible by the public. The sign(s) shall be erected within one day of the Department's public announcement about the Contract in a newspaper of general circulation in the community.

- 1). The sign will state "Voluntary Cleanup Project by CPC under Voluntary Cleanup Contract 10-5139-NRP with the South Carolina Department of Health and Environmental Control." The sign shall provide a brief description of the scope of activities under the Contract, and contact information, including telephone number and address, for a representative of CPC. Contact information for the Department shall state "TOLL-FREE TELEPHONE: 1-866-576-3432".
- 2). All sign lettering must be of sufficient size to be legible with un-aided normal eyesight from the point where the public will normally pass by the site without intruding onto the Property.
- 3). CPC shall submit photographs of the sign and a Property drawing showing the location(s) of the signs. The photographs shall be submitted to the Department within 10 days of erecting the sign.
- 4). CPC agrees to revise the sign if the Department determines the sign is inaccurate, not legible, or otherwise ineffectively placed.
- 5). CPC shall maintain the sign(s) in legible condition and at visible locations throughout the duration of the contract period until a Certificate of Completion is issued on the Property.
- 6). The sign(s) may be removed to accommodate building or grading activities; however, CPC shall restore the sign within two days to its original location, or

other publicly accessible location upon notice to the Department.

### PROGRESS UPDATES

7. CPC shall submit periodic written updates to the Department's project manager until such time as all activities are complete pursuant to this Contract. The first update shall be due within ninety days of the execution date of this Contract and semi-annually thereafter.
  - A. The updates may be in summary letter format, but should include information about:
    - 1). The actions taken under this Contract during the previous reporting period;
    - 2). Actions scheduled to be taken in the next reporting period;
    - 3). Sampling, test results, and any other data in summary form, generated during the previous reporting period regardless of whether the data was collected pursuant to this Contract; and,
    - 4). A description of any environmental problems experienced during the previous reporting period and the actions taken to resolve them.
  - B. The Department's project manager may allow an extended schedule between updates based on site-specific conditions.

### SCHEDULE

8. CPC shall perform all activities and response actions pursuant to this Contract in an expeditious manner. In the event that circumstances dictate a delay in implementation of the response actions, the Department may require implementation of interim measures to stabilize the contamination or prevent unacceptable exposures. CPC shall implement the interim measures in accordance with a Department-approved plan.

### DECLARATION OF COVENANTS AND RESTRICTIONS

9. CPC or its Beneficiaries shall enter, and record, a Declaration of Covenants and Restrictions (the "Covenant") for the Property as the response actions pursuant to this

Contract do not allow for unrestricted use of the Property. CPC acknowledges that based on previously documented contaminant levels in soil, the Covenant will restrict the use of the Property against stand-alone residences with yards. CPC also acknowledges that the Covenant will restrict groundwater use due to the potential impact from Calhoun Park Area Site contaminants. The Covenant will require the placement of Department approved exposure barriers across the Property (i.e. the building footprint and the paved parking). Digging or other land disturbance activities must be in accordance with the approved SMP. The recorded Covenant shall be incorporated into this contract as an Appendix and shall be implemented as follows:

- A. The Department shall prepare and sign the Covenant prior to providing it to CPC. An authorized representative of CPC or its Beneficiaries shall sign the Covenant within ten days of receipt. All signatures shall be witnessed, and signed and sealed by a notary public.
- B. CPC or its Beneficiaries shall file the executed Covenant with the Registrar of Deeds for the county where the Property is located.
- C. CPC or its Beneficiaries shall provide a copy of the recorded Covenant to the Department within sixty days of the Department's execution. The copy shall show the date and Book and Page number where the Covenant has been recorded.
- D. CPC or its Beneficiaries shall annually document the Property's land use and compliance with the Covenant to the Department. The report shall be submitted before May 31<sup>st</sup> in a manner and form prescribed by the Department.
- E. The Department may amend the Covenant in response to changes in law, completion of remedial actions meeting the applicable standards in effect at the time, or if other circumstances of the Site change; however, said amendment shall not be applied retroactively unless expressly provided for in the enabling legislation. An amendment may strengthen, relax, or remove restrictions based on the Regional

Screening Tables in effect at that time; however, the Department shall not impose a more restrictive condition based solely on changes in the Regional Screening Tables. An amendment shall be duly executed and recorded with the county using procedures similar to those detailed above.

#### NOTIFICATION

10. All correspondence required to be given by either party to the other shall be in writing.

Each party shall have a continuing obligation to identify a contact person, whose name, address, and telephone number must be updated to the other party, throughout the term of the contract. Notices by electronic mail or facsimile shall be acceptable if acknowledged in writing by the recipient; with the delivery date being the date of acknowledgment or earlier date if stated in the acknowledgment. All other forms of correspondence shall be deemed sufficiently given if delivered at the address shown below, or at such place or to such agent as the parties may from time to time designate in writing, by: 1) regular U.S. Mail; 2) Certified or Registered Mail; 3) Commercial delivery service company; or, 4) hand delivery to the other party.

A. All correspondence to the Department including two hardcopies of all Work Plans and reports, and one hardcopy of the Health and Safety Plan should be submitted to:

Jo Cherie Overcash  
Brownfields Program  
Bureau of Land and Waste Management  
2600 Bull Street  
Columbia, South Carolina 29201

B. CPC's designated contact person as of the effective date of this contract shall be:

Timothy J Bright, Executive Vice President  
Holder Properties, Inc.  
3333 Riverwood Parkway Suite 300  
Atlanta, Georgia 30339

### FINANCIAL REIMBURSEMENT

11. CPC or its Beneficiaries shall reimburse the Department for its public participation costs and for oversight costs of activities specific to this Contract as provided by S.C. statutes. The oversight costs shall include the direct and indirect costs incurred by the Department in implementing the Voluntary Cleanup Program as related to this Contract, and any future amendments thereof, and may include costs incurred by the Department prior to execution of this Contract. Invoices for oversight costs will be sent to CPC on a quarterly basis. All costs are payable within thirty days of the Department's invoice submitted to:

Timothy J. Bright, Executive Vice President  
Holder Properties, Inc.  
3333 Riverwood Parkway, Suite 300  
Atlanta, Georgia 30339

### ACCESS TO THE PROPERTY

12. CPC agrees the Department has an irrevocable right of access to the Property after CPC acquires the Property. This right of access remains until such time as remediation is accomplished for unrestricted use and monitoring is no longer required, and shall extend to the Department's authorized representatives and all other persons performing response actions on the Property under the Department's oversight.

### CERTIFICATE OF COMPLETION AND COVENANT NOT TO SUE

13. A Certificate of Completion will be issued on the Property as follows:
  - A. CPC shall request a Certificate of Completion after the response actions are completed and the required Covenants are recorded pursuant to this Contract. The request shall be in writing and shall report 1) the amount of any soil that was removed or remediated on the Property; and 2) the cost of all environmental work conducted pursuant to this Contract.

- B. The Department will issue the Certificate of Completion with its covenant not to sue upon determining that CPC has successfully and completely complied with the Contract.
- C. The Department may issue a Provisional Certificate of Completion if the substantive response actions are complete but all activities on the Property cannot be completed due to site-specific circumstances.
  - 1). A Provisional Certificate of Completion will include specific performance standards that CPC or its Beneficiaries shall continue to meet.
  - 2). The Provisional Certificate of Completion may include the Department's covenant not to sue for Existing Contamination; however, said covenant shall be automatically revoked if CPC or its Beneficiaries do not satisfactorily complete the requirements of the Contract.

#### ECONOMIC BENEFITS REPORTING

- 14. CPC or its Beneficiaries shall report information to the Department that demonstrates that the activities pursuant to this Contract have been beneficial to the State and community. The report shall be submitted within two years after the execution date of this Contract, and annually until two years after redevelopment of the Property is complete. CPC or its Beneficiaries shall summarize the new operations at the Property, the number of jobs created, the amount of increase to the tax base, and the total amount invested in the site for property acquisition and capital improvements.

#### TRANSFER OF CONTRACT

- 15. The terms and conditions of this Contract apply to and inure to the benefit of the Department, CPC, and its Beneficiaries. The following stipulations apply to ensure the transition of all responsibilities and benefits to successive Beneficiaries for any portion of the Property:

- A. CPC or its Beneficiaries shall provide a copy of this Contract and applicable Appendices to any subsequent holder of any interest in the Property. Transmittal of



the Contract copy may be via any commonly accepted mechanism.

- B. CPC and its Beneficiaries shall not allow residential occupancy on the ground level on any portion of the Property.
- C. If the Certificate of Completion has not been issued, CPC or its Beneficiaries shall seek approval from the Department prior to assigning or transferring the protections and obligations of this Contract to a new individual or entity. The protections shall not inure to an individual or entity without the Department's approval. The Department shall not unreasonably withhold its approval upon receipt of documentation from the new individual or entity showing it:
  - 1). Is eligible to be a Bona Fide Prospective Purchaser for the Property;
  - 2). Has sufficient resources to complete the activities of this Contract;
  - 3). Will not use the Property for activities that are inconsistent with the terms and conditions of this Contract;
  - 4). Will assume the protections and all obligations of this Contract and,
  - 5). Will, in the Department's sole discretion, provide a measurable benefit to the State and the community as a result of this transfer.
- D. If the Certificate of Completion has been issued and the Property is subject to a Covenant or other ongoing obligation pursuant to this Contract, CPC or its Beneficiaries shall provide written notification to the Department identifying the new individual or entity within thirty days after the effective date of the ownership change or other possessory transfer of the Property. The notification should include a signed statement from the new individual or entity that its use of the Property will remain consistent with the terms of the Contract, and that it will assume the protections and ongoing obligations of this Contract.

#### CONTRACT TERMINATION

- 16. CPC, its Beneficiaries, and the Department each reserve the right to unilaterally terminate this Contract by giving thirty days advance written notice to the other party.

Termination shall be subject to the following:

- A. The Department may terminate this Contract only for cause and shall provide opportunity for CPC or its Beneficiaries to correct causes of termination, which may include, but is not limited to, the following:
  - 1). Failure to complete the terms of this Contract;
  - 2). Change in CPC's or its Beneficiaries' business activities on the Property or use of the Property that are inconsistent with the terms and conditions of this Contract;
  - 3). Failure to submit timely payment for costs upon receipt of the Department's invoice;
  - 4). Failure of CPC or its Beneficiaries to implement appropriate response actions for additional contamination or releases caused by CPC or its Beneficiaries, or
  - 5). Providing the Department with false or incomplete information or knowing failure to disclose material information;
  - 6). Failure by CPC or its Beneficiaries to obtain the applicable permits from the Department for the response actions or other activities undertaken at the Property pursuant to this contract; or,
  - 7). Failure by CPC or its Beneficiaries to make material progress toward the expansion, redevelopment, or reuse of the Property as determined by the Department upon consideration of CPC's or its Beneficiaries' marketing efforts, regional economic conditions, and other pertinent information on the Property.
- B. Should CPC or its Beneficiaries elect to terminate, that party shall certify to the Department's satisfaction that any environmental or physical hazards created by CPC or its Beneficiaries have been stabilized or mitigated such that the Property does not pose hazards to human health or the environment that did not exist before the response actions identified in this Contract.
- C. Termination of this Contract by any party does not end the obligations of CPC or its Beneficiaries to pay costs incurred by the Department pursuant to this Contract prior to the date that any such termination takes effect. Payment for such costs shall

become immediately due.

- D. The protections provided to CPC or its Beneficiaries shall be null and void as to any party who willfully or intentionally participated in actions giving rise to termination of the Contract. This shall apply to that party's lenders, parents, subsidiaries, members, managers, employees, assigns, and successors, including lessees, heirs, devisees, and other parties taking an interest in the Property through that party. The protections will continue for any other covered party who did not willfully or intentionally participate in the action giving rise to the termination.

#### ENTITLEMENT OF PROTECTIONS AND BENEFITS

17. CPC and its Beneficiaries are entitled to the protections and benefits provided by S.C. statutes as follows:

- A. Effective on the date this Contract is first executed by the Department:
- 1). Protection from CERCLA contribution claims
  - 2). Protection from third-party claims as provided by S.C. Code Ann. § 44-56-750(H).
  - 3). Eligibility to file annual application for Voluntary Cleanup Activity Tax Credits pursuant to S.C Code § 12-6-3550.
- B. Effective on the date the Certificate of Completion is issued by the Department:
- 1). The Department's covenant not to sue CPC and its Beneficiaries for Existing Contamination except for releases and consequences caused by CPC or its Beneficiaries.
  - 2). Specific tax credits or additional benefits expressly contingent in S.C. statutes on issuance of the Certificate of Completion.
- C. These Protections and Benefits do not apply to any contamination, releases, and consequences caused by CPC and its Beneficiaries. The Department retains all rights under State and Federal laws to compel CPC and its Beneficiaries to perform

or pay for response activity for contamination, releases and consequences created by CPC or its Beneficiaries.

#### RESERVATION OF RIGHTS BY THE DEPARTMENT

18. Nothing in this Contract is intended to be, or shall be construed as, a release or covenant not to sue for any claim or cause of action, past or future, that the Department may have against any person, firm, or corporation other than CPC and its Beneficiaries. The Department reserves the right to undertake future response actions at the Site and to seek to compel parties, other than CPC and its Beneficiaries, to perform or pay for response actions at the Site. Nothing in this Contract shall in any way restrict or limit the nature or scope of response actions that may be taken or be required by the Department in exercising its authority under State and Federal law.

#### RESERVATION OF RIGHTS BY CPC

19. CPC retains all rights to assert claims in law or equity against any person, company, or entity with respect to the Property, except as limited elsewhere by this Contract. CPC and its Beneficiaries specifically deny responsibility for response costs or damages resulting from Existing Contamination except for contamination, releases, and consequences they cause or contribute to the Site. However, CPC and its Beneficiaries agree to undertake the requirements of this Contract.

#### BURDEN OF PROOF

20. CPC and its Beneficiaries shall have the continuing obligation to demonstrate that any newly discovered contamination is not attributable to CPC or its Beneficiaries. CPC and its Beneficiaries shall make this demonstration to the Department's satisfaction in accordance with State or Federal Law applicable to such newly discovered contamination. For purposes of this clause, newly discovered contamination means finding types of contamination not previously identified at the Site or substantially higher concentrations of Existing Contamination.

LIMITATION OF CLAIMS BY CPC AND ITS BENEFICIARIES

21. In consideration of the protections from the Department, CPC and its Beneficiaries agree not to assert any claims or causes of action against the Department or to seek other costs, damages, or attorney's fees from the Department arising out of activities undertaken at the Site. This limitation shall not extend to any claims or causes of action resulting from the Department's intentional or grossly negligent acts or omissions, or the Department's willful violation of the terms of this agreement.

SIGNATORS

22. The signatories below hereby represent that they are authorized to and do enter into this contract on behalf of their respective parties.

**THE SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL  
CONTROL**

BY: \_\_\_\_\_  
Daphne G. Neel, Chief  
Bureau of Land and Waste Management

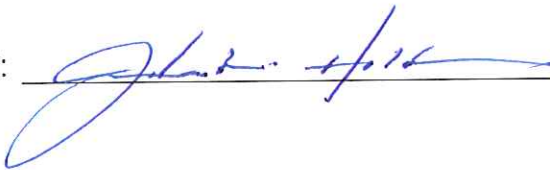
DATE: \_\_\_\_\_

\_\_\_\_\_  
Approved by Office of General Counsel

DATE: \_\_\_\_\_

**CONCORD PARK/CHARLESTON, LLC**

BY: \_\_\_\_\_



DATE: \_\_\_\_\_

4/20/10

\_\_\_\_\_  
John R. Holder, Manager

## EXHIBIT 1

DRAWN BY: KCM DATE: 9/27/07 FILE NAME: 02207636.00

Phase 1 Environmental Site Assessment

Concord Park

Intersection of Calhoun, Concord,

Laurens, and Washington Streets

Charleston, South Carolina

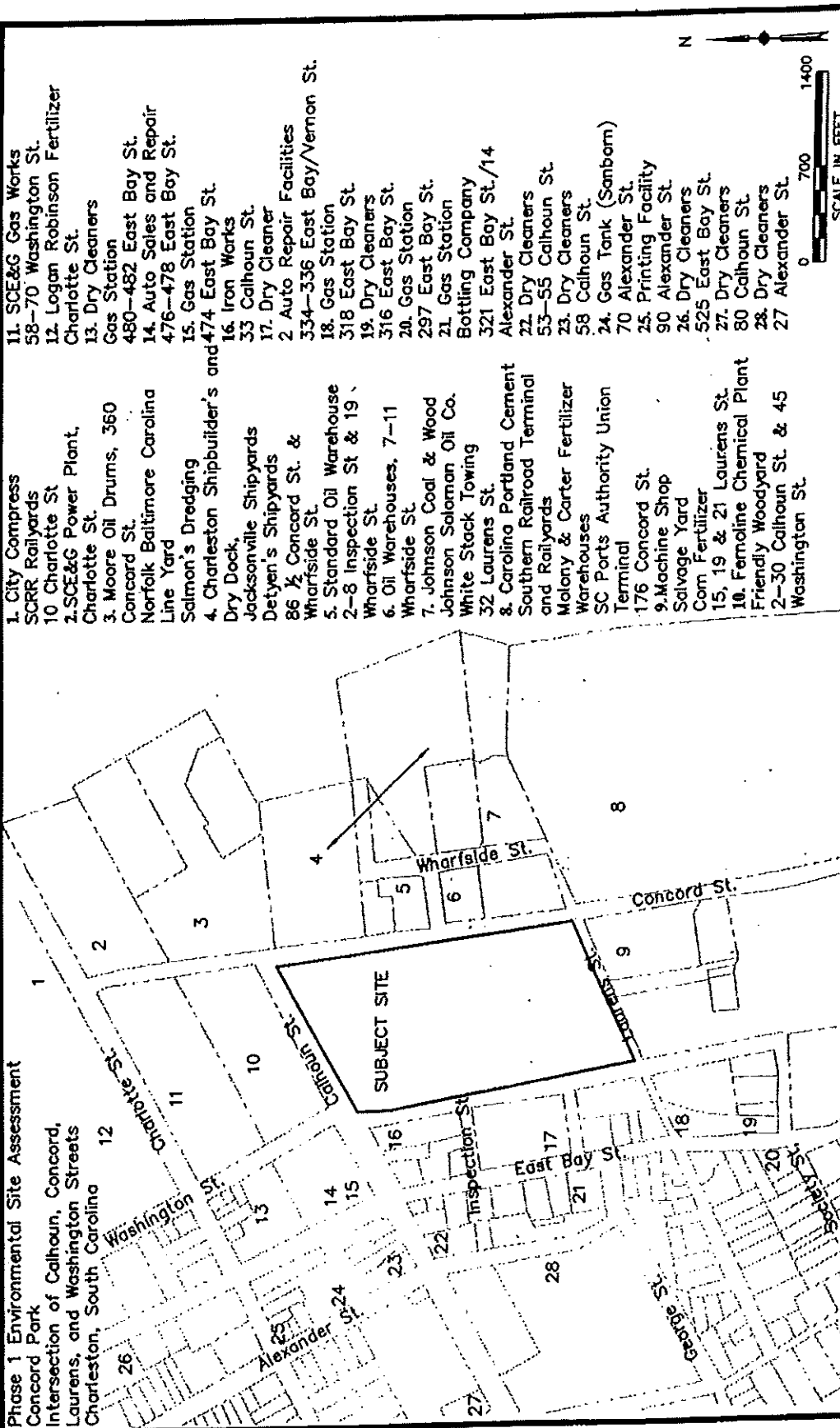


Figure 3. Subject Site with Former Surrounding Properties

## APPENDIX A





## Non Responsible Party Application for Voluntary Cleanup Contract

### I. Applicant Information

1. Applicant is a: ☒ Single Entity ☐ Co-Entity (Each Co-Entity must complete items 1-8)  
2. Applicant Type: ☐ Private Individual /Sole Proprietorship ☒ For-profit Business (Corp., Partnership, etc.) ☐ Tax-Exempt Trust/ Corporation/ Organization ☐ Government / Other Public Funded Entity  
3. Applicant's Legal Name Concord Park / Charleston, LLC

#### 4. Contract Signatures for this Applicant

##### a. Authorized Signatory

John R. Holder

Manager

Name	Title	Email
c/o Holder Properties, Inc.	770-988-3131	
Address	Phone1	Phone2
3333 Riverwood Parkway, Suite 300 Atlanta,	GA	30339
City	State	Zip

##### b. Other Signatories ☒ None

Name	Title	Phone	Email	Signature Required On Contract?
		( ) -		<input type="checkbox"/>
		( ) -		<input type="checkbox"/>
		( ) -		<input type="checkbox"/>

#### 5. Physical Location of Applicant's Headquarters

c/o Holder Properties, Inc. 333 Riverwood Parkway Suite 300  
Street address Suite Number  
Atlanta GA 30339  
City State Zip

#### 6. Mailing address: ☒ Same as Authorized Signatory Go to question 7

Contact person (if different from Authorized Signatory) Title  
Street Number or PO Box Phone1 Phone 2  
City State Zip Email

#### 7. Company Structure Information ☐ Not-applicable (Local Government, Sole Proprietorship, Private Individual) - Go to Question #8

a. Company is Incorporated/ Organized/ Registered in Georgia (state)

b. List all principals, officers, directors, controlling shareholders, or other owners with >5% ownership interest.

Attach additional pages if needed.

Name	Name
JRH Concord Park, LLC	

c. Is the applicant a subsidiary, parent or affiliate of any other business organization not otherwise identified on this form?

☐ Yes ☒ No

d. If yes, identify all affiliations:

#### 8. Non-Responsible Party Certification

By signature below, it is affirmed that no person or entity identified anywhere above:

1. Is a current owner of the property
2. Is a Responsible Party for the site
3. Is a parent, successor, or subsidiary of any Responsible Party or owner of the property
4. Has had any involvement with the property in the past other than activities performed in anticipation of participation in the Voluntary Cleanup Program

Authorized Signatory

Co Signatories

## II. Property Information

### 9. Location

a. Physical Address 25 Calhoun Street, Charleston, SC 29401

b. County Charleston

c. ☐ Property is outside any municipal boundaries      ☒ Property is inside the municipal limits of Charleston  
(town/city)

### 10. List any Companies or Site names by which the Property is known

Ansonborough Park

Concord Park

### 11. Total Size of Property Covered by this Contract 0.6 Acres

### 12. How many parcels comprise the Property? 1

### 13. Current Zoning (general description)

MU-2, 55/30V, Accommodations overlay district. Mixed use zoning designation allowing proposed use (office) within height limitations and FEMA velocity zone requirements.

### 14. a. Does the property have any above- or below-ground storage tanks? ☐ Yes ☒ No

b. If Yes, provide information on the number and capacity of the tanks, their contents, and whether they will be retained, or closed and/or removed.

15. Parcel Information Complete the information below for each Parcel (attach additional sheets if needed)

a. Tax Map Parcel# TMG# 458-01-02-028  
b. Acreage 0.6 acres  
c. Current Owner City of Charleston  
d. Owner Mailing Address Attn: ? Andrews  
50 Broad Street  
Charleston, SC 29402  
e. Contact Person for Access Tim Bright  
f. Access Person's Phone # 770-988-3131  
g. Is Parcel Currently Vacant? ☒ Yes ☐ No  
h. Buildings on the parcel? ☒ None  
(check all that apply) ☐ Demolished/Ruins  
☐ Intact, To be demolished  
☐ Intact, To be re-used  
i. Business/facility operations ☐ Never Operated on the parcel  
☒ Not operating since 1989  
(approx date)  
☐ In operation: nature of the business \_\_\_\_\_

a. Tax Map Parcel# \_\_\_\_\_  
b. Acreage \_\_\_\_\_  
c. Current Owner \_\_\_\_\_  
d. Owner Mailing Address \_\_\_\_\_  
e. Contact Person for Access \_\_\_\_\_  
f. Access Person's Phone # \_\_\_\_\_  
g. Is Parcel Currently Vacant? ☐ Yes ☐ No  
h. Buildings on the parcel? ☐ None  
(check all that apply) ☐ Demolished/Ruins  
☐ Intact, To be demolished  
☐ Intact, To be re-used  
i. Business/facility operations ☐ Never Operated on the parcel  
☐ Not operating since \_\_\_\_\_  
(approx date)  
☐ In operation: nature of the business \_\_\_\_\_

a. Tax Map Parcel# \_\_\_\_\_  
b. Acreage \_\_\_\_\_  
c. Current Owner \_\_\_\_\_  
d. Owner Mailing Address \_\_\_\_\_  
e. Contact Person for Access \_\_\_\_\_  
f. Access Person's Phone # \_\_\_\_\_  
g. Is Parcel Currently Vacant? ☐ Yes ☐ No  
h. Buildings on the parcel? ☐ None  
(check all that apply) ☐ Demolished/Ruins  
☐ Intact, To be demolished  
☐ Intact, To be re-used  
i. Business/facility operations ☐ Never Operated on the parcel  
☐ Not operating since \_\_\_\_\_  
(approx date)  
☐ In operation: nature of the business \_\_\_\_\_

a. Tax Map Parcel# \_\_\_\_\_  
b. Acreage \_\_\_\_\_  
c. Current Owner \_\_\_\_\_  
d. Owner Mailing Address \_\_\_\_\_  
e. Contact Person for Access \_\_\_\_\_  
f. Access Person's Phone # \_\_\_\_\_  
g. Is Parcel Currently Vacant? ☐ Yes ☐ No  
h. Buildings on the parcel? ☐ None  
(check all that apply) ☐ Demolished/Ruins  
☐ Intact, To be demolished  
☐ Intact, To be re-used  
i. Business/facility operations ☐ Never Operated on the parcel  
☐ Not operating since \_\_\_\_\_  
(approx date)  
☐ In operation: nature of the business \_\_\_\_\_

a. Tax Map Parcel# \_\_\_\_\_  
b. Acreage \_\_\_\_\_  
c. Current Owner \_\_\_\_\_  
d. Owner Mailing Address \_\_\_\_\_  
e. Contact Person for Access \_\_\_\_\_  
f. Access Person's Phone # \_\_\_\_\_  
g. Is Parcel Currently Vacant? ☐ Yes ☐ No  
h. Buildings on the parcel? ☐ None  
(check all that apply) ☐ Demolished/Ruins  
☐ Intact, To be demolished  
☐ Intact, To be re-used  
i. Business/facility operations ☐ Never Operated on the parcel  
☐ Not operating since \_\_\_\_\_  
(approx date)  
☐ In operation: nature of the business \_\_\_\_\_

a. Tax Map Parcel# \_\_\_\_\_  
b. Acreage \_\_\_\_\_  
c. Current Owner \_\_\_\_\_  
d. Owner Mailing Address \_\_\_\_\_  
e. Contact Person for Access \_\_\_\_\_  
f. Access Person's Phone # \_\_\_\_\_  
g. Is Parcel Currently Vacant? ☐ Yes ☐ No  
h. Buildings on the parcel? ☐ None  
(check all that apply) ☐ Demolished/Ruins  
☐ Intact, To be demolished  
☐ Intact, To be re-used  
i. Business/facility operations ☐ Never Operated on the parcel  
☐ Not operating since \_\_\_\_\_  
(approx date)  
☐ In operation: nature of the business \_\_\_\_\_

### III. Property Redevelopment

16. Describe the intended re-use of the property:  
(attach additional sheets if necessary)

Three story office building over parking (see attached rendering).

17. a. Will the future use include any chemical processes, petroleum or chemical storage and handling, on-site waste disposal, or generate any hazardous substances? ☐ Yes ☒ No  
b. If Yes, identify the substances and discuss steps that will be taken to prevent their release to the environment.

18. Will redevelopment lead to the creation of permanent jobs on the property? ☒ Yes Anticipated Number 11  
☐ No

19. Projected Increase to the Tax Base as a result of this redevelopment: \$ 11,700,000

20. a. Will there be intangible benefits from this redevelopment such as:  
☒ LEED, Earth Craft, EnergyStar, or similar certification of Sustainable Development  
☐ Creation / Preservation of Green Space on the Property  
☐ Deconstruction/ Recycling of demolition or building debris  
☐ Other \_\_\_\_\_

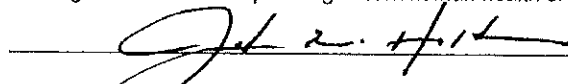
- b. Please Describe:

As with all of our projects, this building will be designed to be environmentally responsible.

21. Anticipated date of closing or acquiring title to the property 06 / 01 / 10

22. Redevelopment Certification

By signature below, the applicant(s) affirm that their proposed use and activities will not knowingly aggravate or contribute to existing contamination or pose significant human health or environmental risks on the property.



Signature(s)

### IV. Project Management And Financial Viability (Co-Entities, refer to instruction sheet)

23. Environmental Consulting Firm

☐ None as of this application date

SCS Engineers

Company

1360 Truxton Avenue, Suite 100

N. Charleston

South Carolina

29405

Address

City

State

Zip

Nina G. Marshtein, P.G.

843-746-8525

Project Contact1

S.C PE/PG Reg. #

Phone1

Phone 2

email

Project Contact 2

S.C PE/PG Reg. #

Phone1

Phone 2

email

## 24. Legal Counsel (Optional)

Sutherland Asbill &amp; Brennan LLP

Firm

Randall Quintrell

404-853-8366

404-580-2482

Attorney

Phone1

Phone 2

999 Peachtree Street, NE

Atlanta

GA

30309

Street Number or PO Box

City

State

Zip

email

25. Applicant's Billing Address ☒ Same as Contact person in #6 above Go to question #26

Financial Contact

Title

Company

Phone

Address

City

State

Zip

## 26. Financial Viability

By signature(s) below, the applicant agrees to:

1. Pay the Department's costs upon receipt of invoices for implementing the Voluntary Cleanup Program for this Property, and
2. Provide financial statements, if requested, to document financial viability to conduct the response actions on the Property.

☐ Waiver Requested (Check Box If applicable)

The applicant is a Local Government or qualifies as a 501(c) Non-Profit Organization, and requests waiver of some Departmental costs of implementing this contract.

Signatures

## V. Application Completion (The following are required along with this form. Check applicable boxes)

27. The Legal Description of the Property is attached as a: ☐ Plat Map ☐ Metes and Bounds Text ☐ Both

28. The Phase I Environmental Site Assessment Report is attached as a:

☒ New report completed in the past six months by SCS Engineers

(Name of Environmental Firm)

☐ Older report updated in the past six months by \_\_\_\_\_

(Name of Environmental Firm)

29. Environmental sampling data and other reports: (check one)

☐ The Applicant is not aware of any environmental testing on the property☒ The Applicant believes the Department already has all environmental data in its files on: Calhoun Park Site☐ The Following reports are attached:

(Site Name)

Report Date

Report Name

Environmental Firm

30. Mailing addresses of Former Owners, Operators and other Potentially Responsible Parties:(check one)

☐ Enclosed with this Application as an Attachment☐ Will be submitted along with (or before) the signed contract

31. The applicants attest by signature below that this application is accurate to their best knowledge. Furthermore, the applicants request DHEC evaluate the Property for inclusion in the Brownfields Voluntary Cleanup Program and draft a Non-Responsible Party Contract for the Property.

Signature(s)

## This Section for Department Use Only

Assigned File Name		
Eligible for NRP Contract	Y N	
Assigned File Number		
Assigned Contract Number		



